

EXHIBIT 4

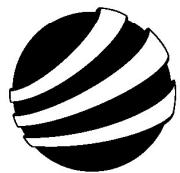
In the Matter Of:

Hammons vs University of Maryland Medical System

1:20-cv-02088-DKC

DR. GAIL P. CUNNINGHAM

April 14, 2022



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Hammons vs University of Maryland Medical System

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1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3

4 JESSE HAMMONS,)

5 Plaintiff,)

6 -v-) Case No.

7 UNIVERSITY OF MARYLAND MEDICAL) 1:20-cv-02088-DKC

8 SYSTEM CORPORATION, et al.)

9 Defendants.)

10

11

12 Videotaped Deposition of Gail P. Cunningham

13 Towson, MD

14 Thursday, April 14, 2022

15 9:00 a.m.

16

17

18 Job No: J8078725

19 Pages: 1-308

20 Reported by: Kenneth Norris

21

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1 Deposition of Gail P. Cunningham

2 Taken at:

3 UNIVERSITY OF MARYLAND

4 ST. JOSEPH MEDICAL CENTER

5 7601 Osler Drive

6 Towson, MD 21204

7 Telephone: (410) 328-8667

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14 Pursuant to Notice, before Kenneth Norris, a
15 Professional Reporter and Notary Public in and for the
16 State of Maryland.

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1 that it -- I know it was announced in December. I
2 don't know the actual signature date.

3 Q. So from 1996 to 2012, St. Joseph was owned
4 and operated by Catholic Health Initiatives; right?

5 A. Yes.

6 Q. And what is Catholic Health Initiatives?

7 MR. WERNER: Object to the form.

8 THE WITNESS: It's another Catholic
9 corporation that owns and operates multiple hospitals
10 across the United States. I don't know elsewhere.

11 BY MR. DELMAN:

12 Q. And then in 2012 St. Joseph was purchased by
13 the University of Maryland Medical System; right?

14 A. Yes.

15 Q. Now, were you involved in any way with the
16 negotiations concerning the purchase of St. Joseph?

17 A. Only being at some -- actually at this table
18 sometimes when there would be discussions back and
19 forth about timing, but not in -- nothing monetary or
20 in any -- no part of the actual negotiations.

21 Q. You didn't have any role in the negotiation

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1 of the terms of the asset purchase agreement?

2 A. No.

3 Q. And did you have any role in the negotiation
4 of the Catholic identity agreements?

5 A. No.

6 Q. So St. Joseph is currently an LLC with the
7 name University of Maryland St. Joseph's Medical
8 Center, LLC; right?

9 A. Right.

10 Q. And that LLC has one member; right?

11 A. Yes.

12 Q. And that member is UMSJ Health System, LLC?

13 A. I believe so.

14 Q. And UMSJ Health System in turn also has only
15 one member; right?

16 A. I believe so.

17 Q. And that member is the University of
18 Maryland Medical System Corporation?

19 A. I believe so.

20 Q. And so, UMSJ Health System is a wholly owned
21 subsidiary of University of Maryland Medical System?

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1 MR. WERNER: Object to the form.

2 THE WITNESS: I don't know what that term
3 means, wholly owned subsidiary.

4 BY MR. DELMAN:

5 Q. The University of Maryland Medical System is
6 the only owner of UMSJ Health System?

7 A. Yes.

8 Q. And similarly, UMSJ Health System is the
9 only owner of St. Joseph's Medical Center?

10 A. Yes.

11 Q. So University of Maryland through UMSJ is
12 the sole owner of St. Joseph; right?

13 MR. WERNER: Object to the form.

14 THE WITNESS: Yes.

15 BY MR. DELMAN:

16 Q. And no other entity has any ownership stake
17 in St. Joseph?

18 A. No.

19 Q. Now, the University of Maryland St. Joseph
20 Medical Center was previously known as Northeastern
21 Maryland Regional Health System, LLC; right?

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1 feel free to look through it as much or as little as
2 you like. You can just let me know when you're done
3 looking at it.

4 A. Okay.

5 Q. I just ask you to turn to HUM 596.

6 A. Okay.

7 Q. I'd ask you to just read this section here
8 right on the page.

9 MR. WERNER: You want her to read it aloud?

10 MR. DELMAN: No, to herself.

11 MR. WERNER: Okay.

12 THE WITNESS: Okay.

13 BY MR. DELMAN:

14 Q. According to this document, this Form 990
15 for UMSJ, UMMS has the ability to appoint members to
16 the board of the UMSJ Health System; right?

17 MR. WERNER: Object to the form.

18 THE WITNESS: Yes.

19 BY MR. DELMAN:

20 Q. And also all decisions of USMJ's governing
21 board must be approved by UMS?

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1 MR. WERNER: Object to the form.

2 THE WITNESS: That's what this says.

3 BY MR. DELMAN:

4 Q. Do you have any reason to believe that
5 that's not the case?

6 MR. WERNER: Object to the form.

7 THE WITNESS: No.

8 BY MR. DELMAN:

9 Q. Do you have any reason to believe that UMS
10 does not have the ability to appoint members of the
11 board of UMSJ?

12 A. No.

13 Q. This is UMMS 832 being marked as Plaintiff's
14 Exhibit 4.

15 (Plaintiff's Exhibit No. 4 was marked for
16 identification.)

17 THE WITNESS: Is there anything in
18 particular you want me to look at?

19 BY MR. DELMAN:

20 Q. I'm happy to move ahead and we can sort of
21 work through it together.

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1 Q. Dr. Cunningham, this is the second amended
2 and restated offering agreement for St. Joseph's
3 Medical Center; right?

4 A. Yes.

5 Q. Have you seen this document before?

6 A. I don't believe so.

7 Q. I just want to confirm here on the -- in
8 this first paragraph, it confirms that this was
9 effective as of September 11, 2019?

10 MR. WERNER: Object to the form.

11 THE WITNESS: That's what this states.

12 BY MR. DELMAN:

13 Q. Did you have any awareness before this of
14 St. Joseph having a second amended and restated
15 offering agreement?

16 A. No.

17 Q. Turn with me to 1011 of Section 305.

18 If you'll look at Section C, this again
19 confirms that UMMS has the right to directly appoint
20 two voting members.

21 MR. WERNER: Object to the form.

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1 THE WITNESS: Yes.

2 BY MR. DELMAN:

3 Q. And according to Section B, the UMMS CEO or
4 his or her designee also sits on the board as an
5 ex officio director?

6 MR. WERNER: Object to the form.

7 THE WITNESS: Yes.

8 BY MR. DELMAN:

9 Q. Is that CEO currently Dr. Mohan Suntha?

10 A. Yes.

11 Q. Am I pronouncing that correctly?

12 A. Suntha.

13 Q. Suntha?

14 A. Right.

15 Q. Great. And Dr. Suntha is also on the
16 board's executive committee; right?

17 MR. WERNER: Object to the form.

18 THE WITNESS: Yes.

19 BY MR. DELMAN:

20 Q. Now, one other member of the board is also
21 representative of the Archdiocese of Baltimore?

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1 A. Go ahead.

2 Q. According to subsection E UMMS has the power
3 and authority to elect all of the elected directors
4 pursuant to a nomination process?

5 MR. WERNER: Object to the form.

6 THE WITNESS: If the member means UMMS, yes.

7 BY MR. DELMAN:

8 Q. Now, if you'll just turn back to Exhibit 4,
9 please?

10 MR. WERNER: Are we done with 5?

11 MR. DELMAN: We might come back to it.

12 BY MR. DELMAN:

13 Q. And turn to page 916. Is that right? Yes.
14 Look at Subsection C.

15 MR. WERNER: Of 12.16, is that what we're
16 talking about?

17 MR. DELMAN: Correct.

18 THE WITNESS: Okay.

19 BY MR. DELMAN:

20 Q. Okay. So just according to Section C,
21 Subsection C, the UMSJ board is the -- strike that.

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1 According to Subsection C, the board of UMSJ
2 Health System is also the board of SJMC?

3 MR. WERNER: Object to the form.

4 THE WITNESS: Yes.

5 BY MR. DELMAN:

6 Q. As far as you're aware, UMMS still retains
7 the power to directly appoint two members to the UMSJ
8 and SJMC boards?

9 A. As far as I know.

10 Q. Do you know who those members are currently?

11 A. Dr. Lisa Rowan, which is -- they've had some
12 board turnover recently. I'm just trying to remember.

13 It had been the dean of the medical school.

14 Now it's Dr. Lisa Rowan and -- I'm not sure of the
15 other member right now. It may come to me.

16 Q. I'm sorry. Just going to 915, the page
17 prior, it's Roman numeral 5.

18 A. Yes.

19 Q. It says here that apart from the
20 representative of the Archdiocese, the CEO, and the
21 two directly appointed voting members, all other

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1 members shall be appointed by UMMS pursuant to a
2 nomination process?

3 MR. WERNER: Object to the form.

4 THE WITNESS: Yes.

5 BY MR. DELMAN:

6 Q. Do you have any reason to believe that
7 that's no longer the case?

8 A. No.

9 Q. You don't know who those members are off the
10 top of your head?

11 A. The two UMMS members?

12 Q. No. The members who are not either
13 ex officio representatives of the Archdiocese or the
14 two UMMS members.

15 A. I could name some of them.

16 Q. Do you have any -- do you have any sense of
17 approximately what percentage of the board those
18 members constitute?

19 A. Probably between half and three quarters.

20 Q. As we discussed previously, all decisions by
21 the board of UMSJ must be approved by UMMS; right?

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1 MR. WERNER: Object to the form.

2 THE WITNESS: That's what it states, yes.

3 BY MR. DELMAN:

4 Q. And as you discussed, you have no reason to
5 believe that's not the case?

6 A. Correct.

7 Q. If you will turn with me to on the same
8 exhibit, Exhibit 4 -- Exhibit 4 to 963. So we're
9 looking at Exhibit F, which is titled UMMS's reserved
10 powers; right?

11 A. Yes.

12 Q. I think just for efficiency sake, please
13 feel free to just read through the three pages of that
14 exhibit, and then we can talk.

15 A. Okay.

16 Q. So, according to the asset purchase
17 agreement, UMMS has reserved certain powers for
18 itself; right?

19 MR. WERNER: Object to the form.

20 THE WITNESS: Yes.

21 BY MR. DELMAN:

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1 Q. For example, UMMS has to approve any
2 amendments to USMJ Health Systems' articles or
3 organizational operating agreement?

4 MR. WERNER: Object to the form.

5 BY MR. DELMAN:

6 Q. And UMMS has to approve of USMJ's annual
7 budget?

8 MR. WERNER: Object to the form.

9 THE WITNESS: Yes.

10 BY MR. DELMAN:

11 Q. Does the annual budget include the salaries
12 and compensation for all employees of USMJ Health
13 System?

14 A. I believe so.

15 Q. And UMMS has to approve of UMSJ Heath
16 System's strategic plans; right?

17 MR. WERNER: Object to form.

18 THE WITNESS: Yes.

19 BY MR. DELMAN:

20 Q. Do you know what this document means by
21 strategic plans?

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1 A. Yes. Each hospital has a five-year
2 strategic plan or three years, depends on -- a
3 five-year strategic plan as approved by the board and
4 then approved by UMMS.

5 Q. What sorts of information is in the
6 strategic plan?

7 A. Anything from quality goals to expansion
8 goals, you know. Partnership goals. Could be a
9 digital health strategy, an array of activities across
10 the hospital that would be strategic usually set with
11 some metrics or targets.

12 Q. Would it ever involve any planned or
13 proposed changes in policies and procedures?

14 A. It's not that specific, no.

15 Q. UMMS also has to approve any material
16 additions, expansions, revisions or deletions of the
17 health care services not an approved budget or
18 strategic plan; right?

19 MR. WERNER: Object to the form.

20 THE WITNESS: Yes.

21 BY MR. DELMAN:

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1 Q. And UMMS has also reserved the power to make
2 UMSJ Health System take certain actions without prior
3 approval of the board; right?

4 MR. WERNER: Object to the form.

5 THE WITNESS: Yes.

6 BY MR. DELMAN:

7 Q. For example, UMMS can appoint and remove
8 UMSJ Health System's CEO; right?

9 MR. WERNER: Object to the form.

10 THE WITNESS: Yes.

11 BY MR. DELMAN:

12 Q. And UMMS can add, expand, revise, or delete
13 certain health care services provided by UMSJ Health
14 System?

15 MR. WERNER: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. DELMAN:

18 Q. UMMS can make UMSJ Health Systems submit
19 corrective action plans if performance and financial
20 targets aren't met?

21 MR. WERNER: Object to the form.

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1 THE WITNESS: Yes.

2 BY MR. DELMAN:

3 Q. And it can enforce those corrective action
4 plans?

5 MR. WERNER: Object to the form.

6 THE WITNESS: Yes.

7 BY MR. DELMAN:

8 Q. Do you have any reason to believe that UMMS
9 no longer holds any of those reserved powers?

10 A. No.

11 Q. Are you aware of any other powers that UMMS
12 exercises over the UMSJ Health System or SJMC?

13 MR. WERNER: Object to the form.

14 THE WITNESS: No.

15 BY MR. DELMAN:

16 Q. Now, UMMS' 2012 acquisition of St. Joseph
17 was contingent on the approval from the Roman Catholic
18 Church; right?

19 A. Yes.

20 Q. And as part of the acquisition, UMMS
21 committed to continuing to operate SJMC in a manner

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1 Plaintiff's Exhibit 6.

2 (Plaintiff's Exhibit No. 6 was thereupon
3 marked for identification.)

4 BY MR. DELMAN:

5 Q. Dr. Cunningham, this is the Catholic
6 identity agreement; right?

7 A. Yes.

8 Q. Have you seen this before?

9 A. Yes.

10 Q. When did you see this?

11 A. I probably saw it in its entirety a long
12 time ago, and then I have seen a few pages of it in
13 preparation for the deposition.

14 Q. Okay.

15 The Catholic identity agreement requires
16 that St. Joseph be operated in accordance with the
17 ERDs; right?

18 A. Correct.

19 Q. And also UMMS is the signatory for the
20 Catholic identity agreement; right?

21 A. Yes.

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1 Q. And the Catholic identity agreement mandates
2 the creation of a clinical ethics committee?

3 A. Yes.

4 Q. As far as you're aware, members of that
5 committee must be trained on the ERDs?

6 A. Yes.

7 Q. And they must agree to act as committee
8 members in compliance with the ERDs?

9 A. Yes.

10 Q. The Catholic identity agreement also
11 requires that St. Joseph undergo an audit by the
12 National Catholic Bioethics Center every two years;
13 right?

14 A. Yes.

15 Q. And what is the National Catholic Bioethics
16 Center?

17 MR. WERNER: Object to the form.

18 THE WITNESS: It's a center located in
19 Philadelphia that is the resource for ethical and
20 moral direction for Catholic Health Care at least, and
21 one of their arms is to conduct audits of Catholic

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1 hospitals to make sure we're in alignment with the
2 expectations related to being a Catholic hospital.

3 BY MR. DELMAN:

4 Q. And in general, would you agree that the
5 National Catholic Bioethics Center understands what
6 the ERDs mean and require?

7 MR. WERNER: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. DELMAN:

10 Q. Is it fair to say that the National Catholic
11 Bioethics Center's interpretations of the ERDs are
12 authoritative interpretations?

13 MR. WERNER: Object to the form.

14 THE WITNESS: I don't know what you mean by
15 authoritative.

16 BY MR. DELMAN:

17 Q. Is it fair to say that if the National
18 Catholic Bioethics Center released a document stating
19 what the ERDs require, you would trust that
20 interpretation?

21 MR. WERNER: Object to the form.

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1 THE WITNESS: Yes.

2 BY MR. DELMAN:

3 Q. The Catholic identity agreement also
4 requires the creation of the Catholic identity
5 committee?

6 A. Yes.

7 Q. And one purpose of that committee is to
8 ensure that St. Joseph remains faithful to the ERDs?

9 A. Yes.

10 Q. And we'll just turn very quickly to 1048,
11 which is the signature page?

12 MR. WERNER: It's a one-signature page.

13 MR. DELMAN: Yes.

14 BY MR. DELMAN:

15 Q. The signatory here for the University of
16 Maryland St. Joseph Medical Center is Megan Arthur;
17 right?

18 A. Yes.

19 Q. As we discussed, Megan Arthur was general
20 counsel for UMMS?

21 A. Yes.

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1 MR. WERNER: Object to the form.

2 BY MR. DELMAN:

3 Q. Now, do you have any reason to believe that
4 the requirements set forth in the Catholic identity
5 agreement do not reflect the present reality of
6 operations at St. Joseph?

7 MR. WERNER: Object to the form.

8 THE WITNESS: No reason to think so.

9 BY MR. DELMAN:

10 Q. And is it fair to say that physician
11 compliance with ERDs was the largest part of the focus
12 when UMMS purchased St. Joseph?

13 MR. WERNER: Object to the form.

14 THE WITNESS: When you -- I don't know. I
15 don't know the physician complying with the ERDs was
16 the primary focus.

17 BY MR. DELMAN:

18 Q. This is UMMS 817 going to be marked as
19 Plaintiff's Exhibit 7.

20 (Plaintiff's Exhibit No. 7 was thereupon
21 marked for identification.)

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1 Q. And the document says here that Dr. Rossiter
2 mentioned that when a physician signs on, he signs to
3 all of the ERDs and that this was the largest part of
4 the focus when UMMS purchased St. Joseph.

5 MR. WERNER: Object to the form.

6 BY MR. DELMAN:

7 Q. Do you see that?

8 A. Yes. So Dr. Rossiter was the chief of OB at
9 the time, and that might have been her perception.

10 Q. Do you have any reason to believe that that
11 perception was incorrect?

12 MR. WERNER: Object to the form.

13 THE WITNESS: Well, I know that there were
14 many other parts of the Catholic identity agreement
15 that were beyond the ERDs.

16 BY MR. DELMAN:

17 Q. So, Dr. Cunningham, based on the agreements
18 we've reviewed, do you agree that St. Joseph does not
19 have the power to decide that it will no longer adhere
20 to and operationalize the ERDs?

21 MR. WERNER: Object to the form.

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1 THE WITNESS: It's such an unfathomable
2 question.

3 I imagine in the -- per the legal documents
4 that would be the case.

5 BY MR. DELMAN:

6 Q. And do you agree that the majority or at
7 least half of St. Joseph's board is selected either
8 directly or following a nomination process by UMMS?

9 MR. WERNER: Object to the form.

10 THE WITNESS: It's not quite half. It's
11 depending on the number.

12 BY MR. DELMAN:

13 Q. But a significant number?

14 A. A significant number, yes.

15 Q. Do you agree that St. Joseph lacks the power
16 to decide that it will no longer maintain a Catholic
17 identity committee?

18 MR. WERNER: Object to the form.

19 You're just asking for a legal conclusion.
20 She's no here testifying as a lawyer.

21 THE WITNESS: Yes. I imagine if the legal

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1 documents are written, that's the case. But, again,
2 I'm not an attorney.

3 BY MR. DELMAN:

4 Q. Going back to the documents.

5 Oh, I'll ask, do you believe that St. Joseph
6 would face -- do you believe that St. Joseph would be
7 free to no longer maintain a Catholic identity
8 committee, if it wanted to?

9 MR. WERNER: Object to the form.

10 THE WITNESS: No. It's one of our
11 obligations.

12 BY MR. DELMAN:

13 Q. And do you believe that St. Joseph would be
14 free to no longer hire and have a vice president for
15 admission integration, if it wanted to?

16 MR. WERNER: Objection to the form.

17 THE WITNESS: No. It's part of the
18 agreement.

19 BY MR. DELMAN:

20 Q. And would St. Joseph be free to no longer
21 have an ethics committee if it wanted to?

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1 MR. WERNER: Object to the form.

2 THE WITNESS: No. It's part of the
3 agreement.

4 BY MR. DELMAN:

5 Q. And do you believe that St. Joseph would be
6 free to no longer participate in the National Catholic
7 Bioethics Center's audit on a biannual basis?

8 MR. WERNER: Object to the form.

9 THE WITNESS: No. It's part of the
10 agreement.

11 MR. DELMAN: All right. Why don't we take a
12 break.

13 MR. WERNER: How long?

14 MR. DELMAN: 10 minutes.

15 VIDEOGRAPHER: Off the record at 10:08.

16 (Whereupon, a recess ensued.)

17 VIDEOGRAPHER: Back on the record at 10:18.

18 BY MR. DELMAN:

19 Q. Good afternoon. Dr. Cunningham, we
20 discussed that regarding the 2012 negotiations you
21 were not personally involved in those negotiations;

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1 A. Yes.

2 MR. WERNER: Object to the form.

3 BY MR. DELMAN:

4 Q. Now, you know hysterectomies do result in
5 sterilization. You would agree that physicians do not
6 typically perform hysterectomies for the purpose of
7 sterilization; right?

8 A. At this organization or across the country?

9 Q. Across the country.

10 A. Well, across the country I can't speak to. I
11 can only speak to at this organization.

12 Q. As a medical professional, do you have any
13 sense of how common it is for medical professionals in
14 this country to perform hysterectomies solely for the
15 purpose of sterilization?

16 MR. WERNER: Object to the form.

17 THE WITNESS: I would think it would not
18 happen often.

19 BY MR. DELMAN:

20 Q. And why do you think it would not happen
21 often?

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1 A. Because I do not believe it would be
2 considered a medically necessary procedure. And there
3 are alternatives.

4 Q. And what are some of those alternatives?

5 A. Any array of contraceptive procedures.

6 Q. Such as?

7 A. An IUD, a tubal ligation, ablation, probably
8 those are the main ones.

9 Q. Now, putting aside -- strike that.

10 Hysterectomies are in fact performed to
11 treat diagnosed medical conditions; right?

12 A. Yes.

13 Q. And in fact hysterectomies are frequently
14 performed here at St. Joseph to treat certain medical
15 conditions; right?

16 A. Yes.

17 Q. Now, we get to the final immediate parts.

18 MR. DELMAN: Paul, I tried to do this in way
19 that would be most successful for your client, so what
20 we have here first is a printout not of the entirety
21 of UMMS 1034, but the first 20 rows of each sheet.

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1 It's a multi-sheet document.

2 MR. WERNER: Yes.

3 MR. DELMAN: So I suggest to have a paper
4 copy to mark as an exhibit.

5 MR. WERNER: And do you have a native
6 version as well that you're going to --

7 MR. DELMAN: I do. I have it on iPad, which
8 I'm going to provide to the witness.

9 MR. WERNER: I don't need two.

10 MR. DELMAN: Sorry.

11 So this is UMMS 1034 and it will be
12 Exhibit 8.

13 (Plaintiff's Exhibit No. 8 was thereupon
14 marked for identification.)

15 BY MR. DELMAN:

16 Q. So before I get this is to, Dr. Cunningham,
17 I'm showing you a spreadsheet that was produced to us
18 by your counsel, and they represented to us that it
19 shows all hysterectomies performed at St. Joseph from
20 fiscal year 2017 through fiscal year 2022, which is
21 still ongoing.

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1 Have you seen this spreadsheet before?

2 A. Yes.

3 Q. And when did you see this spreadsheet
4 before?

5 A. It was shared with me by counsel this past
6 week.

7 MR. WERNER: Well, just to be clear, don't
8 go into things that we did together to prepare for the
9 deposition.

10 So if you saw a document that refreshed your
11 recollection, you can testify to that. But please
12 don't go into things that I may have shown you.

13 THE WITNESS: Okay.

14 BY MR. DELMAN:

15 Q. Dr. Cunningham, did you have any involvement
16 in the creation of this spreadsheet?

17 A. No.

18 Q. Okay. Actually, I don't need to give this
19 to you yet.

20 What I have here is good for our purposes.

21 So let's just start with this summary sheet,

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1 which is this first sheet here.

2 A. Um-um.

3 Q. So this sheet purports to summarize by
4 diagnostic code all the hysterectomies performed at
5 St. Joseph during fiscal year 2017 to 2022; right?

6 A. Yes.

7 Q. Now, do you know where this data was pulled
8 from?

9 A. I presume from our electronic medical
10 records.

11 Q. Is that EPIC?

12 A. Yes.

13 Q. Is there any other electronic medical record
14 system here at St. Joseph?

15 A. Yes, there is a different record used in the
16 GI lab. That's the only one that I'm aware of.

17 Q. This would have come from EPIC?

18 A. Yes.

19 Q. And do you know what office handled pulling
20 this data?

21 A. Surgical services has a business office, and

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1 I believe it would be the business office tied to
2 surgical services.

3 Q. So actually if we go to the very last page
4 of this, there is a page with -- it says HPN sample on
5 top. Do you see here on -- by sample name it says
6 "Katy's request for account numbers."

7 A. Okay.

8 Q. Do you know who Katy is?

9 A. That's probably Kate Christner, who is the
10 business manager. I don't know if that's her official
11 title, but functions as a business manager for
12 surgical services.

13 Q. And so Katy -- do you think Katy is the
14 person who supervised the collection of this data?

15 A. Most likely.

16 Q. Okay. So let's go back to the summary.

17 So column A here is the medical indication
18 for hysterectomy; right?

19 A. Yes.

20 Q. So I think you just nodded.

21 A. Yes.

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1 Q. An column B here is the ICD-10 diagnostic
2 code that corresponds to that indication?

3 A. Correct.

4 Q. And both column A and column B are the
5 preoperative diagnoses; right?

6 A. I presume so.

7 Q. You presume so?

8 A. It's the principale diagnostic code, yes.

9 Q. And so those would be the diagnoses that
10 form the basis for the hysterectomy being performed;
11 right?

12 A. I believe so. Although, if it's just
13 principle diagnosis, there may be two -- two, three
14 other reasons as well listed, but this is just one
15 principle diagnosis.

16 Q. And if one wanted to find those two or three
17 other underlying preoperative diagnoses where would
18 one be able to find that information?

19 A. I imagine through a similar query, but I
20 don't know for sure.

21 Q. So now we will go to the iPad.

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1 I will pass this over to you. And if it
2 gets closed out, let me know because I can get back
3 into it. It is password protected.

4 A. Okay.

5 Q. I have you on the summary page there. You
6 can feel free to scroll up and down on that page.

7 A. Okay.

8 Q. And so according to this spreadsheet, 634
9 hysterectomies were performed at St. Joseph during
10 fiscal year 2017 through 2022; right?

11 A. Yes.

12 Q. And do you have any reason to disagree with
13 that count?

14 A. No.

15 Q. So does it sound accurate to you to say that
16 number equates to approximately two to three
17 hysterectomies per week?

18 A. 634 divided by 5 years times 50 weeks?

19 Yes, one to two. Yes.

20 Q. So you would agree that hysterectomies are a
21 fairly common procedure here at St. Joseph; right?

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1 Q. You have no knowledge in your personal
2 capacity?

3 A. Right.

4 Q. And do you have any knowledge in your
5 capacity as corporate representative?

6 A. No.

7 Q. And, again, putting aside procedures
8 involving transgender patients, isn't it true that
9 there is no particular procedure in place at St. Joe's
10 for reviewing whether a hysterectomy is complying with
11 the ERDs?

12 MR. WERNER: Object to the form.

13 THE WITNESS: There's not a procedure in
14 place, but there is implicit, I think -- I mean, there
15 is knowledge that's conveyed to the people who would
16 be doing those procedures of what's acceptable and
17 what's not acceptable. And very clearly stated that
18 we do not do sterilization -- man, woman, whomever --
19 here at St. Joe's.

20 BY MR. DELMAN:

21 Q. And so physicians at St. Joe's -- and

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1 THE WITNESS: Okay.

2 BY MR. DELMAN:

3 Q. So what we're looking here is a document
4 from NCBC entitled Transgender Issues in Catholic
5 Health Care.

6 First of all, do you recall ever seeing this
7 document before?

8 A. I can't recall. I may have.

9 There are a couple of terms here that look
10 familiar to me. I'm not sure. In the data in the FAQ
11 at the bottom it says surgery is ringing a bell.
12 That's an unusual term, so I may have, but I can't say
13 for sure.

14 Q. Does the document sort of refresh your
15 recollection of anything?

16 A. No.

17 Q. And so, Dr. Cunningham, we already discussed
18 that you trust NCBC to understand what the ERDs
19 require; right?

20 A. Right.

21 MR. WERNER: Object to the form.

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1 THE WITNESS: Right.

2 BY MR. DELMAN:

3 Q. And according to this document, gender
4 transitioning should never be performed, encouraged,
5 or positively affirmed as a good in Catholic Health
6 Care; right?

7 MR. WERNER: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. DELMAN:

10 Q. And that includes surgeries, the
11 administration of cross-sex hormones, or puberty
12 blockers, and social behavioral modifications?

13 MR. WERNER: Object to the form.

14 THE WITNESS: Correct.

15 BY MR. DELMAN:

16 Q. And do you have any reason to believe that
17 the guidance that's in this document does not apply
18 here at St. Joe's?

19 MR. WERNER: Object to the form.

20 THE WITNESS: No.

21 BY MR. DELMAN:

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1 Q. So, for example, medical personnel at
2 St. Joe's cannot provide a transgender patient with
3 voice-alteration therapy for the purpose of gender
4 transition; right?

5 MR. WERNER: Object to the form.

6 THE WITNESS: Per this form, yes, that's
7 correct.

8 BY MR. DELMAN:

9 Q. And that treatment does not involve
10 sterilization; right?

11 A. That's correct.

12 Q. And that treatment also did not involve the
13 removal of any healthy organs?

14 MR. WERNER: Object to the form.

15 THE WITNESS: That's correct.

16 BY MR. DELMAN:

17 Q. Similarly, medical personnel here at
18 St. Joe's cannot prescribe or administer cross-sex
19 hormone therapy for the purpose of gender transition;
20 right?

21 A. That's correct.

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1 Q. And, again, that treatment does not involve
2 sterilization?

3 A. That's correct.

4 Q. And that treatment does not involve the
5 removal of any healthy organs?

6 A. That's correct.

7 Q. Medical personnel here at St. Joe's cannot
8 perform breast reconstruction for a transgender woman
9 for the purpose of gender affirmation right?

10 A. That's correct.

11 Q. And, again, that treatment does not involve
12 sterilization?

13 A. That's correct.

14 Q. And that treatment also does not involve the
15 removal of any healthy organs?

16 A. It would be removal of breast tissue that
17 would be considered healthy.

18 Q. Is tissue synonymous with organ in this
19 context?

20 A. I would say, yes.

21 Q. So the removal of any skin can count as

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1 removal of healthy tissue?

2 MR. WERNER: Object to the form.

3 THE WITNESS: I would say healthy skin
4 removal. Trying to think of a circumstance where that
5 would even be likely, but if -- you know, I would say
6 since skin is an organ and -- yeah, the removal of
7 healthy skin would not be considered okay.

8 BY MR. DELMAN:

9 Q. Is breast reconstruction primarily an
10 additive procedure as opposed to a subtractive
11 procedure?

12 MR. WERNER: Object to the form.

13 THE WITNESS: It can be either.

14 BY MR. DELMAN:

15 Q. In what ways is it subtractive?

16 A. Well, you can have breast reduction surgery,
17 right? Or you can have breast augmentation surgery.

18 Q. What about a surgery where you are giving a
19 patient breasts whereas they otherwise did not have
20 breasts?

21 A. What about that?

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1 Q. Would that be additive or subtractive?

2 A. I a traditional way of thinking, it would be
3 additive.

4 Q. And would that involve the removal of
5 healthy organs?

6 MR. WERNER: Object to the form.

7 THE WITNESS: No. But in the context of
8 this conversation it would be alteration.

9 BY MR. DELMAN:

10 Q. What do you mean alteration?

11 A. Of the body.

12 Q. Alteration of the body?

13 A. Yes.

14 Q. And in what way does alteration of the body
15 play into this conversation?

16 A. Well, when I think about the ERDs and the
17 items that you just read, we are prohibited from, for
18 instance, reconstructive surgery related to
19 transgender. So we would be prohibited from doing
20 breast reconstructions as additive -- adding breast
21 tissue for the purpose of transgender reaffirming.

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1 Q. But you would able to do that procedure, for
2 example, on a patient who had, say, previously gotten
3 a mastectomy to treat breast cancer?

4 MR. WERNER: Object to the form.

5 THE WITNESS: Yes.

6 BY MR. DELMAN:

7 Q. Now, Dr. Cunningham, you have been part of
8 conversations at St. Joe's about whether gender
9 transition procedures may take place here; right?

10 A. Correct.

11 Q. This is --

12 MR. WERNER: 14.

13 BY MR. DELMAN:

14 Q. -- UMMS 111, and it is also Exhibit 14.

15 MR. DELMAN: Thank you, Paul.

16 (Plaintiff's Exhibit No. 14 was thereupon
17 marked for identification.)

18 BY MR. DELMAN:

19 Q. Dr. Cunningham, I'm showing you here an
20 e-mail chain from November 2014.

21 A. Yes.

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1 Q. I recall we discussed that you have reviewed
2 some e-mails prior to this deposition. Is this one of
3 those?

4 A. Yes.

5 Q. So I ask you to turn, when you're ready to
6 UMMS 114, which will be the second to last page.

7 A. Yes.

8 Q. And so this is an e-mail from Dr. Rachel
9 Bluebond-Langner dated November 13, 2014, to you;
10 right?

11 A. Um-um.

12 Q. And who is Dr. Bluebond-Langner?

13 A. She was a plastic surgeon who had
14 privileges here at St. Joe's and operated
15 occasionally.

16 Q. And here Dr. Bluebond-Langner is e-mailing
17 you about performing a penile reconstruction case?

18 A. Correct.

19 Q. Generally, do you recall having this
20 interaction with Dr. Bluebond-Langner?

21 A. I recall having a couple of interactions

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1 with her, yes.

2 Q. And, generally, do plastic surgeons need to
3 get permission from you to perform procedures here at
4 St. Joe's?

5 A. No. For the most part, no. This is pretty
6 rare.

7 Q. And this case here in particular involved a
8 transgender patient; right?

9 A. Presumably, yes.

10 Q. And I believe this was in fact the third
11 time Dr. Bluebond-Langner had approached you
12 about performing surgery on a transgender patient;
13 right?

14 A. I think that's what I reference in the
15 e-mail. I don't remember now, but I said that then.
16 I think that would be accurate.

17 Q. Okay.

18 If you can turn to the bottom of 113. Tell
19 me if that bottom part refreshes your recollection as
20 to anything.

21 A. Yes. I mean, that confirms the third time,

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1 yes.

2 Q. And those other two surgeries were also
3 phalloplasties; right?

4 A. I believe so.

5 Q. Do you recall when those other two instances
6 were?

7 A. I don't recall, but if I was to guess, I
8 would guess it was -- the three occasions was within a
9 year's time.

10 Q. Okay.

11 A. Maybe.

12 Q. Do you generally recall any details about
13 those other cases?

14 A. Only that, I think, she approached me by
15 phone or text with the other cases. I don't know that
16 there was e-mails. This is the only one that I've
17 seen an e-mail for, so I think it would have been by
18 phone. I remember having a phone conversation or two
19 with her.

20 Q. So in those cases do you recall if the
21 procedures had been scheduled before she reached out

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1 to you?

2 A. I don't recall. I don't think so, but I
3 don't recall.

4 Q. And also do you recall what the results were
5 of those prior two conversations?

6 A. Yes. She had privileges at the medical
7 center as well, and I told her that I didn't think
8 those cases should proceed here at St. Joe's and that
9 she should take care of the patients at the medical
10 center.

11 Q. When you say the medical center, is that
12 GBMC?

13 A. No. That's the University of Maryland
14 Medical Center. She had privileges -- primarily most
15 of her surgeries were done down there, and she rarely
16 operated up here.

17 Q. Okay.

18 And so is it your understanding that the
19 reason Dr. Bluebond-Langner reached out to you about
20 this particular case is because it involved a
21 transgender patient?

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1 A. Yes.

2 Q. And --

3 A. Where the procedure was a
4 transgender-related surgery, yes.

5 Q. And isn't it true that at the time of this
6 e-mail St. Joe's did not have any institutional policy
7 regarding transgender surgeries?

8 MR. WERNER: Object to the form.

9 THE WITNESS: The policies would have fallen
10 -- would have been related to our ERDs. We didn't
11 have a written policy about transgender patients.

12 BY MR. DELMAN:

13 Q. So I look at this e-mail here, this one on
14 the bottom of 113, and you wrote here "I do not feel
15 comfortable being a sole arbitrator of these sorts of
16 decisions and think we need an institutional policy in
17 this regard."

18 Do you see that?

19 A. Yes.

20 Q. So what did you mean by we need an
21 institutional policy?

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1 A. That we had the ERDs, but we didn't have an
2 explicit -- these are the -- you know, go back to the
3 CPT codes. These are the -- you know, very
4 prescriptive. This is what is not allowed at
5 St. Joe's so it wouldn't have to be one-off
6 conversations about each procedure as we were
7 approached about them.

8 Q. So there was a general understanding that
9 gender transition was not permitted at St. Joe's?

10 A. Right.

11 Q. But there was no sort of explicit formal
12 policy in place?

13 A. Right.

14 Q. And following this -- following this
15 interaction, did St. Joe's, in fact, formulate any
16 sort of institutional policy?

17 A. No.

18 Q. Now, if you turn back to 114, very quickly,
19 this proposed phalloplasty involved a patient who
20 already had no breast, vagina, or uterus; right?

21 A. Correct.

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1 Q. So the only thing that's happening in this
2 surgery was the creation of a phallus?

3 A. Correct.

4 Q. And so the surgery would not have involved
5 any sterilization; right?

6 A. Correct.

7 Q. And would the surgery have involved the
8 removal of any healthy organs?

9 A. I don't believe so.

10 Q. So back to the top of 113, you have an
11 e-mail from -- an e-mail reply from Dr. Dietrick.
12 Dr. Dietrick at the time was chief of surgery?

13 A. Correct.

14 Q. I'll also have to ask the D-3 in his
15 signature is that because his name is Daniel D.
16 Dietrick?

17 A. Yes.

18 Q. I like that.

19 And here Dr. Dietrick wrote that St. Joe's
20 had the technical capability of performing the
21 surgery; correct?

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1 A. Yes.

2 Q. And now on 112 we have our e-mail response
3 from Susanne DeCrane; right?

4 A. Yes.

5 Q. And Susanne DeCrane who at that time was
6 vice president of mission integration?

7 A. Yes.

8 Q. Was she Keith Riddle's immediate
9 predecessor?

10 A. There was one person in between.

11 Q. Who was in between?

12 A. For a short period of time -- I'm blanking
13 on his name. Michael was his first name, but I can't
14 remember his last name. He was only here for a few
15 months. I can get that to you, but I don't have it
16 off the top of my head.

17 Q. All right.

18 Am I correct that the chronology starting
19 with Susanne DeCrane is Susanne DeCrane, Michael
20 question mark last name, interim period where you are
21 pinch hitting, then Keith Riddle, then Father Sobey?

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1 A. Yes.

2 Q. And so, here in this e-mail from Ms. DeCrane
3 -- actually Dr. DeCrane -- Dr. DeCrane said that the
4 procedure cannot take place at St. Joe's because it
5 was not consistent with the Catholic moral tradition;
6 right?

7 A. Right.

8 Q. And here Dr. DeCrane notes that St. Joe's
9 does not perform procedures whose direct purpose or
10 intention is sterilization; right?

11 A. Right.

12 Q. But we've established that this proposed
13 penile reconstruction did not involve sterilization;
14 right?

15 A. Correct.

16 Q. Now, let's turn to the front page briefly.
17 And your e-mails here refer to Mohan.

18 That's Mohan Suntha?

19 A. Um-um.

20 Q. And at the time Dr. Suntha was CEO of
21 St. Joe's; right?

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1 A. Correct.

2 Q. As we've discussed, he's now CEO of UMMS?

3 A. Yes.

4 Q. When did Dr. Suntha become CEO of UMMS?

5 A. Probably three years ago, I believe. I
6 don't know the exact date. He left here and he became
7 the CEO of the medical center downtown, so the
8 academic hub. And he did that for a couple of years
9 and then he moved into the CEO of UMMS. I don't know
10 the exact date, but about two and a half years ago,
11 I'd say.

12 Q. Was he the immediate successor of Dr. Smyth?

13 A. Yes. And that happened five and a half
14 years ago.

15 Q. Got it.

16 And so, based on this correspondence, is it
17 fair to say that medical personnel at St. Joe's cannot
18 perform phalloplasties for a transgender man for the
19 purpose of gender affirmation?

20 A. Yes.

21 Q. Even though it doesn't involve

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1 sterilization?

2 A. Yes.

3 Q. And even if it did involve removal of
4 healthy organs?

5 A. Yes.

6 Q. Now, for example, they could perform a
7 phalloplasty on a cisgender man if his penis was
8 terribly injured in an accident; right?

9 MR. WERNER: Object to the form.

10 THE WITNESS: Yes.

11 BY MR. DELMAN:

12 Q. Do you recall at any point when you were
13 discussing these issues either with
14 Dr. Langer-Bluebond [sic] or with your colleagues,
15 whether there was any effort to determine whether the
16 patient's gender dysphoria was severe enough to be
17 life-threatening?

18 MR. WERNER: Object to the form.

19 THE WITNESS: No.

20 BY MR. DELMAN:

21 Q. And just to confirm, the idea of

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1 know that there's a database that keeps that
2 information.

3 Q. You don't know if there is a database
4 anywhere that shows procedures that have been
5 cancelled?

6 A. Oh, I'm sure there are cancellations, but I
7 don't think it would have a comment that it's ERD
8 related.

9 Q. Okay. Did you take a look back at prior
10 cancelled procedures in general?

11 A. No.

12 Q. So just in general -- we've got one minute?
13 Yeah. Why don't we take a break so you can get to
14 your call and come back.

15 VIDEOGRAPHER: Off the record at 1:59.

16 (Whereupon, a recess ensued.)

17 VIDEOGRAPHER: Stand by. Back on the record
18 at 2:13.

19 BY MR. DELMAN:

20 Q. Dr. Cunningham, you testified earlier that
21 in order for a hysterectomy to be performed here at

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1 St. Joe's there must be a diagnosis for which a
2 hysterectomy is within the standard of care; right?

3 MR. WERNER: Object to the form.

4 THE WITNESS: Yes.

5 BY MR. DELMAN:

6 Q. And so, putting aside gender dysphoria,
7 isn't it true that so long as the hysterectomy is
8 consistent with the standard of care for a given
9 diagnosis, the hysterectomy may be performed here?

10 MR. WERNER: Object to the form.

11 THE WITNESS: Yes.

12 BY MR. DELMAN:

13 Q. Also, generally, isn't it true that
14 St. Joe's prohibits medical personnel from
15 participating in all gender transitions or gender
16 aforming treatments -- sorry -- gender affirming
17 treatments for transgender patients?

18 MR. WERNER: Object to the form.

19 THE WITNESS: Yes.

20 BY MR. DELMAN:

21 Q. And that's true for both surgical and

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1 nonsurgical treatments; right?

2 A. Correct.

3 Q. And that policy does not necessarily depend
4 on whether the treatment in question involves the
5 removal of healthy organs?

6 A. Correct.

7 Q. And that policy also does not depend on
8 whether the treatment in question either directly or
9 indirectly leads to an inability to procreate?

10 A. Can you say the last statement again?

11 Q. Sure.

12 And that policy does not depend on whether
13 the treatment in question, either directly or
14 indirectly, leads to an inability to procreate?

15 A. When you're referring to the policy, are you
16 referring to the practice that's allowed here? And I
17 think I'm just getting a little disoriented.

18 The procedure -- if the procedure is
19 medically indicated, it could affect the ability to
20 procreate and it would be allowed. I think that's
21 what you're asking.

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1 Q. So --

2 MR. WERNER: I'm sorry, can we just go off
3 the record? I didn't realize --

4 VIDEOGRAPHER: Off the record at 2:15.

5 (Whereupon, a recess ensued.)

6 VIDEOGRAPHER: Back on the record at 2:17.

7 BY MR. DELMAN:

8 Q. I'll ask that question a slightly different
9 way, Dr. Cunningham.

10 St. Joe's policy of not permitting gender
11 transition treatments, that policy does not depend on
12 whether the treatment in question is a sterilization
13 procedure; right?

14 A. Correct.

15 Q. This will be UMMS 715 and going to be marked
16 as Exhibit 16.

17 (Plaintiff's Exhibit No. 16 was thereupon
18 marked for identification.)

19 BY MR. DELMAN:

20 Q. Dr. Cunningham, this is an e-mail chain from
21 January 2020 discussing a BPA; right?

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1 A. Um-um.

2 Q. Why don't you just go ahead and take a quick
3 look through all of it?

4 A. Okay.

5 Q. Do you recall this e-mail correspondence at
6 all?

7 A. I've seen this, yes.

8 Q. So this e-mail chain starts on January 14th,
9 2020; right?

10 A. Yes.

11 Q. And that was about a week after the
12 cancellation of the plaintiff's hysterectomy?

13 A. Yes.

14 Q. And the subject line for this chain
15 indicates that the participants in the chain are
16 following up regarding the cancellation of that
17 surgery; right?

18 A. Correct.

19 Q. Now, in this e-mail chain, Kate Barbara, the
20 former Kate Barbara, suggests that St. Joe's could
21 create a system that would send a BPH to the scheduler

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1 when a preop diagnosis involves the word gender;
2 right?

3 A. Correct.

4 Q. That we've discussed the system?

5 A. Yes.

6 Q. And I forget -- we thought BPA stands for
7 best practice alert?

8 A. Yes.

9 Q. And so I understand, a best practice alert
10 it an automated alert in EPIQ that warns or advises
11 the reader about clinically significant information?

12 A. Yes.

13 Q. So what Barbara -- what Ms. Barbara is
14 proposing in this e-mail is that schedulers receive an
15 automatic alert any time a surgeon tries to schedule a
16 procedure with a preoperative diagnosis that includes
17 the word gender; right?

18 A. Right.

19 Q. So that means a scheduler would receive a
20 BPA if a surgeon tried to schedule a procedure where
21 there's a preop diagnosis of gender dysphoria?

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1 A. Correct.

2 Q. Or similarly for a gender identity disorder?

3 A. Correct.

4 Q. And this system was specifically suggesting
5 to try to catch and alert people to gender transition
6 surgeries; right?

7 A. Correct.

8 Q. And you wrote that this system would be a
9 great step in helping avoid future postings that
10 should never occur; right?

11 A. Correct.

12 Q. And that's because surgeons are prohibited
13 from performing gender transition procedures at
14 St. Joe's?

15 A. Correct.

16 Q. And this system specifically was suggested
17 because St. Joe's previously did not have any system
18 in place for reviewing scheduled surgeries; right?

19 A. Correct.

20 Q. And I think we discussed this alert -- this
21 system was actually implemented; right?

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1 A. Yes.

2 Q. And has it successfully prevented the
3 posting of any procedures involving transgender
4 patients?

5 A. I don't know.

6 Q. And I think we already discussed this, but
7 has St. Joe's implemented a BPA system for any other
8 set of preoperative diagnosis terms?

9 A. Not that I know of.

10 Q. And same testimony from the perspective of
11 corporate representative?

12 A. Agreed.

13 Q. Okay.

14 Let's turn to discussing the reason we're
15 here, plaintiff's surgery.

16 So when did you first become aware of
17 plaintiff's scheduled hysterectomy?

18 A. On Christmas Eve of 2019, when Dr. Adashek
19 called me at home. Or called my cell and I was at
20 home.

21 Q. So this will be Exhibit 17.

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1 swearing under penalty of perjury that the statement
2 was true and correct to the best of your knowledge?

3 A. Yes.

4 Q. So can you tell me generally what happened
5 on December -- on Christmas Eve 2019 regarding
6 plaintiff's hysterectomy.

7 A. I received a phone call from Dr. Adashek,
8 who wanted to know if it was okay if he performed a
9 hysterectomy on a patient of his for the purpose of
10 transgender -- transgender surgery. And I said no, we
11 cannot do transgender surgery at St. Joe's.

12 And that was the extent of the conversation.

13 Q. And so, Dr. Adashek just sort of like called
14 you out of the blue on Christmas Eve?

15 A. Yes. It was very unusual.

16 Q. And by the time this phone call had
17 happened, had the procedure already been scheduled;
18 right?

19 A. Yes.

20 Q. And no one in scheduling had sort of alerted
21 you that this procedure had been scheduled?

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1 A. No.

2 Q. And generally no one in the hospital had
3 told you that this procedure had been scheduled?

4 A. No.

5 Q. And he hadn't asked you about -- he being
6 Dr. Adashek -- had not asked you about it before
7 scheduling it?

8 A. No.

9 Q. Do you remember approximately how long the
10 phone call was?

11 A. It was brief. A minute.

12 Q. A minute?

13 A. Maybe.

14 Q. That short?

15 A. It was pretty quick, yes.

16 Q. And just again, you two had no prior
17 conversations about this procedure before that date?

18 A. No. No. Not that I can recall.

19 Q. And before this occasion, when was the last
20 time Dr. Adashek had called you directly to request
21 permission to perform any procedure at St. Joe's?

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1 A. I don't believe he ever had.

2 Q. Like, for example, he didn't call you to
3 request permission about the transhysterectomy in 2018
4 that we had discussed?

5 A. Not that I recall.

6 Q. And he obviously generally did not call you
7 to request permission for every hysterectomy he
8 performed at St. Joe's?

9 A. No.

10 Q. So do you recall exactly what Dr. Adashek
11 told you when he called on Christmas Eve 2019?

12 MR. WERNER: Object to the form.

13 THE WITNESS: No, I don't recall the exact
14 details. I know it was a brief conversation. That I
15 was surprised that he was even asking if he could do
16 this because it was well known that we couldn't do
17 those procedures here at St. Joe's. Or I thought
18 everybody knew it well.

19 And we didn't get into any discussion about
20 the specifics of the patient. I accepted that the
21 purpose of the surgery was for transgender purposes.

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1 BY MR. DELMAN:

2 Q. So what did he tell you about the patient's
3 condition on the phone call?

4 A. He didn't tell me about the patient's
5 condition. Just that the patient was seeking
6 transgender surgery and the hysterectomy was part of
7 that. But that was it.

8 There was no degree of illness discussed or
9 degree of anything discussed. It was just about could
10 he do this procedure.

11 Q. Okay. And did he tell you anything about
12 the proposed treatment beyond it being a hysterectomy?

13 A. No.

14 Q. And beyond the fact that the patient was
15 transgender, it was a hysterectomy and it was being
16 done for the purpose of gender transition. Did he
17 tell you anything else about it?

18 MR. WERNER: Object to the form.

19 THE WITNESS: No.

20 MR. WERNER: Asked and answered.

21 THE WITNESS: No.

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1 BY MR. DELMAN:

2 Q. And you told Dr. Adashek that -- on that
3 call that the surgery could not take place at
4 St. Joe's; correct?

5 A. Correct.

6 MR. WERNER: Object to the form.

7 BY MR. DELMAN:

8 Q. And so within the span of that one phone
9 call, you made the choice that -- you made the
10 decision that the hysterectomy could not take place at
11 St. Joe's; right?

12 MR. WERNER: Object to the form.

13 THE WITNESS: Correct.

14 BY MR. DELMAN:

15 Q. And in the span of that one phone call you
16 fully considered the nature of the plaintiff's
17 condition?

18 MR. WERNER: Object to the form.

19 THE WITNESS: I considered the reason that
20 the surgeon wanted to do the surgery and that -- and
21 it was black and white to me, and I said no.

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1 A. I don't recall that.

2 Q. And did you at any point discuss with
3 Dr. Adashek whether the patient's gender dysphoria was
4 severe enough to be life-threatening?

5 THE WITNESS: No.

6 MR. WERNER: Object to the form. Asked and
7 answered.

8 BY MR. DELMAN:

9 Q. It was just the fact that it was a gender
10 transition treatment that was enough to deny it;
11 right?

12 MR. WERNER: Object to the form. Asked and
13 answered.

14 THE WITNESS: Yes.

15 BY MR. DELMAN:

16 Q. And so prior to January 6, 2020, how many
17 other times did you speak with Dr. Adashek about
18 plaintiff's procedure?

19 A. Prior to January the 6th?

20 Q. Um-um.

21 A. Which is when the procedure was scheduled?

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1 whatever reason didn't seek that option.

2 That we wished that we would have -- that he
3 would have been informed and the lack of cancellation
4 just added insult to injury to him, and we were sorry
5 that that happened.6 Q. And do you know -- do you have any sense of
7 what Dr. Smyth intended to say or was it the same
8 thing?

9 MR. WERNER: Object to the form.

10 THE WITNESS: No.

11 BY MR. DELMAN:

12 Q. So now do you recall attending a meeting
13 with Doctors Smyth, Cunningham, and Adashek on
14 January 30th, 2020, to discuss transgender issues in
15 general?

16 A. Yes.

17 Q. And do you recall if anyone else was in
18 attendance at that meeting?19 A. I believe Dr. Buescher was in attendance,
20 but I'm not going to swear to it.

21 Q. Do you recall if Mr. Riddle was in

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1 attendance at the meeting?

2 A. I believe he may have been in that meeting
3 as well.

4 Q. And what was the purpose of that meeting?

5 A. Wanting to understand how Dr. Adashek
6 thought that that surgery would be okay here, and what
7 we might have to do differently to assure that it was
8 very clear to our other surgeons about what was okay
9 and not okay to do here.

10 Q. And what conversation do you recall from
11 that meeting?

12 MR. WERNER: Object to the form.

13 THE WITNESS: That Dr. Adashek talked quite
14 a bit about how he is an advocate for the transgender
15 community here, that he's, I think, sort of become one
16 of the go-to physicians. That he works closely, I
17 think, with Sheppard Pratt and with patients who have
18 suffered other aspects of -- I'm not saying gender
19 dysphoria -- sexual trouble, but he's also helped
20 other patients who have been victims of some sort of
21 trauma related to their sexuality and that -- I

1 suspect I don't recall exactly, but I suspect that he
2 was trying to make a case for, you know, maybe why
3 this is a -- why gender dysphoria is a medical
4 diagnosis.

5 I don't want to get into too much guessing
6 about the exact conversation. I definitely know that
7 he talked about the advocacy for the community, that
8 he was a surgeon that people relied on, that he does
9 these surgeries. That he thought there was an
10 opportunity for us to learn more about it and educate
11 ourselves more about it.

12 That's my recollection.

13 Q. And do you recall him saying anything else
14 beyond that?

15 A. Not without prompting.

16 Q. Okay.

17 Do you recall saying anything during that
18 meeting?

19 A. I'm sure I spoke. I might have expressed
20 frustration with him, again, for not canceling the
21 surgery. And probably asked him directly why did he

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1 think that that was okay to do here.

2 Q. And do you recall what he said in response
3 to that?

4 A. I don't.

5 Q. Did you tell Dr. Adashek during that meeting
6 that it was his fault that plaintiff's procedure was
7 cancelled?

8 A. I don't recall using those words. If I did,
9 it was because had he not put in the case in the first
10 place, he would not have had to cancel it.

11 Q. You don't recall necessarily conveying that
12 message to him?

13 A. What message?

14 Q. That the blame for the cancellation of the
15 surgery was on him?

16 A. I wouldn't be surprised if I had said that.

17 Q. But you don't recall specifically if you did
18 or did not?

19 A. I don't recall any specific words, no.

20 Q. Do you recall if anyone at the meeting
21 conveyed that message to Dr. Adashek?

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1 A. I don't know.

2 Q. And at that meeting did you discuss why
3 plaintiff's hysterectomy was cancelled?

4 A. He knew why it was cancelled.

5 Q. Sure. But did you discuss it at the
6 meeting?

7 A. Most likely. I mean, I think we might have
8 gone over again the reason for the cancellation.

9 Q. And, again, just do you recall what specific
10 reason was given during that meeting?

11 MR. WERNER: Object to the form.

12 THE WITNESS: It was inconsistent with the
13 ERDs.

14 BY MR. DELMAN:

15 Q. Dr. Cunningham, did you exchange e-mails
16 with anyone at St. Joe's about that -- this meeting we
17 have been discussing either before or after it
18 occurred?

19 A. Not that I recall. But if you showed me an
20 e-mail, I would remember.

21 Q. Do you recall texting with anyone at

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1 cancelled by Dr. Adashek on Friday because of
2 insurance-related issues and that was not the reason
3 that it was cancelled. So that's the part that I
4 thought was interesting.

5 Q. Got it.

6 All right. Dr. Cunningham, I would like to
7 just read to you a few statements and ask you whether
8 they are true or false.

9 So here is the first statement.

10 Hysterectomies are generally disallowed and
11 cannot proceed at SJMC.

12 MR. WERNER: Object to the form.

13 BY MR. DELMAN:

14 Q. You can answer the question, ma'am.

15 A. That's false.

16 Q. In fact, hysterectomies are generally
17 allowed at St. Joe's; right?

18 MR. WERNER: Object to the form.

19 THE WITNESS: They are allowed.

20 BY MR. DELMAN:

21 Q. And, in fact, hysterectomies generally can

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1 proceed at St. Joe's?

2 MR. WERNER: Object to the form.

3 THE WITNESS: Yes.

4 BY MR. DELMAN:

5 Q. Here is another statement.

6 Hysterectomies may be performed at
7 St. Joseph only where the procedure is necessary to
8 treat a life-threatening condition.

9 MR. WERNER: Object to the form:

10 BY MR. DELMAN:

11 Q. Is that statement true or false?

12 A. From an ERD perspective if, that's true, not
13 everyone would interpret some of the etiologies with
14 some of the causes for a hysterectomy as
15 life-threatening outside of the ERDs.

16 Q. And we've discussed that there's sort of no
17 formal process in place for reviewing whether a
18 patient scheduled for a hysterectomy has a
19 life-threatening condition; right?

20 MR. WERNER: Object to the form. Asked and
21 answered.

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1 THE WITNESS: That's correct.

2 BY MR. DELMAN:

3 Q. And we've also discussed that there is no
4 sort of documentation showing that any condition for
5 surgery that was performed was sort of assessed to be
6 life-threatening?

7 MR. WERNER: Object to the form.

8 THE WITNESS: Correct.

9 BY MR. DELMAN:

10 Q. Here's another statement.

11 St. Joseph's policy of limiting certain
12 types of surgery to those necessary to treat
13 life-threatening conditions applies to all patients
14 equally regardless of sexual orientation and/or gender
15 identify.

16 MR. WERNER: Object to the form.

17 THE WITNESS: Can you read the statement
18 again, please?

19 BY MR. DELMAN:

20 Q. Of course.

21 St. Joseph's policy of limiting certain